

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**NAFIS WOODS,**

**Plaintiff**

**v.**

**WARDEN RONNIE HOLT;  
ACTING WARDEN ANGELA P.  
DUNBAR; B. SULLIVAN, Hospital  
Administrator; MR. RYAN,  
Food Service Administrator; and  
NEWCOMB, Correctional Counselor,**

**Defendants**

**CIVIL NO. 1:12-CV-0900**

**(Judge Rambo)**

**(Magistrate Judge Carlson)**

**MEMORANDUM**

Before the court is a June 26, 2012, report of the magistrate judge (Doc. 12) to whom this matter is referred in which he recommends that the claim under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2401 *et seq.* be dismissed as to the individual defendants; that the complaint be served on the individual defendants with respect to the *Bivens*<sup>1</sup> constitutional tort claims; that Plaintiff's claim for a specified sum of unliquidated damages be stricken; and that Plaintiff be given an opportunity to correct the defect cited in the report and recommendation of the magistrate judge to bring any other claims he may have. Plaintiff has filed a response to the report and recommendation and appears to be asking the court to amend his complaint for him. He does not otherwise object to the report and recommendation.

Plaintiff is a federal prisoner housed in the Canaan United States Penitentiary at Waymart, Pennsylvania. Liberally construed, Plaintiff brings in his complaint a *Bivens* constitutional tort action against five individual prison officials

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<sup>1</sup>*Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

alleging that the defendants violated his constitutional right under the Eighth Amendment to be free from cruel and unusual punishment. (Doc. 1.) The complaint also recites that Plaintiff is endeavoring to bring this action against the individually-named defendants pursuant to the FTCA., 28 U.S.C. § 2401 *et seq.* and 28 U.S.C. § 2675 *et seq.* Along with his complaint, Plaintiff also filed two motions for leave to proceed *in forma pauperis*.

The magistrate judge conducted a preliminary review of the *pro se* complaint pursuant to 28 U.S.C. § 1915A. Pursuant to that review, the magistrate judge correctly noted that the complaint named five individuals as defendants and no claims were brought against the United States. A claim pursuant to the FTCA can only be brought against the United States and not against individual employees of the United States. *See* 28 U.S.C. § 2671 *et seq.* and 28 U.S.C. § 1346(b). The instant complaint does not state a claim under the FTCA.

Plaintiff will be granted leave to file an amended complaint within twenty days of this order to endeavor to correct the defects brought under the Federal Tort Claims Act. Plaintiff is cautioned that he must meet the administrative requirements before bringing a claim under the FTCA in an amended complaint. In the meantime, an order will be issued directing service of the original complaint upon the five named defendants who shall be required to answer to the *Bivens* claims only.

An appropriate order will be issued.

s/Sylvia H. Rambo  
United States District Judge

Dated: July 10, 2012.

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NAFIS WOODS,

Plaintiff

v.

WARDEN RONNIE HOLT;  
ACTING WARDEN ANGELA P.  
DUNBAR; B. SULLIVAN, Hospital  
Administrator; MR. RYAN,  
Food Service Administrator; and  
NEWCOMB, Correctional Counselor,

Defendants

CIVIL NO. 1:12-CV-0900

(Judge Rambo)

(Magistrate Judge Carlson)

**ORDER**

In accordance with the accompanying memorandum, **IT IS HEREBY ORDERED THAT:**

1) The court adopts the report and recommendation of Magistrate Judge Carlson.

2) Plaintiff's application to proceed *in forma pauperis* is construed as a motion to proceed without full prepayment of fees and costs, and the motion is **GRANTED.**<sup>2</sup>

3) The Clerk of Court shall prepare the summons.

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Plaintiff completed this court's form application to proceed *in forma pauperis* and authorization to have funds deducted from his prison account. The court then issued an administrative order directing the superintendent at his present place of confinement to commence deducting the full filing fee from Plaintiff's prison trust fund account.

4) The United States Marshal shall serve the complaint on Defendants named therein who shall be required only to answer to the *Bivens* claims contained therein, at this time.

5) Defendants shall respond to the *Bivens* claims against them within sixty (60) days of the date of this order.

6) The FTCA claim against the individual defendants is dismissed without prejudice to Plaintiff to file an amended complaint within twenty days of the date of this order that cures the deficiencies of the FTCA claim set forth in the original complaint.

7) Plaintiff's demand for a specific amount of unliquidated damages are stricken from the complaint.

8) This case is remanded to Magistrate Judge Carlson.

s/Sylvia H. Rambo  
United States District Judge

Dated: July 10, 2012.